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Chapter NR 335

DAM MAINTENANCE, REPAIR, MODIFICATION, ABANDONMENT AND REMOVAL AID PROGRAM

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Note: Chapter NR 335 was repealed and recreated by emergency rule effective 9–1–90. Chapter NR 335 as it existed on April 30, 1991, was repealed and a new chapter NR 335 was created effective May 1, 1991.

NR 335.01 Purpose. The purpose of this chapter is to establish procedures for implementation of the dam maintenance, repair, modification, or abandonment and removal aid program established under s. 31.385, Stats.

History: Cr. Register, April, 1991, No. 424, eff. 5–1–91.

NR 335.02 Applicability. (1) This chapter shall apply to all applications for state aid in the form of matching grants for dam maintenance, repair, modification, or abandonment and removal under s. 31.385, Stats.

(2) The provisions of this chapter are applicable to dams that:

- (a) Are owned by a municipality or public inland lake protection and rehabilitation district; and
- (b) Are not inspected, approved and licensed by a federal agency under 18 CFR Part 12.

History: Cr. Register, April, 1991, No. 424, eff. 5–1–91.

NR 335.03 Definitions. For the purpose of this chapter:

(1) “Abandonment” means the removal of a dam in compliance with ch. 31, Stats.

(2) “Approval” means the written approval of the department.

(3) “Authorized representative” means the official or employee designated by resolution of the governing body of a municipality or lake district to act on behalf of the owner under this chapter.

(4) “Dam” means any artificial barrier in or across a waterway which has the primary purpose of impounding or diverting water. A dam includes all appurtenant works, such as a dike, canal or powerhouse.

(5) “Department” means the department of natural resources.

(6) “Directives” means the requirements for repair, maintenance, modification or abandonment established by the department in the inspection report sent to the owner.

(7) “Grantee” means the municipality or lake district which receives a grant award from the state under this chapter.

(8) “Hydraulic shadow” means that area of land downstream from a dam that would be inundated by water upon failure of the dam during the regional flood.

(9) “Investigation” means an inspection performed by the department after the owner has received either directives in an inspection report or an order, to determine whether the owner may be eligible for a grant under this chapter for work that remains to be performed on the dam.

(10) “Lake district” means a public inland lake protection and rehabilitation district formed under ch. 33, Stats.

(11) “Land use controls” means a floodplain zoning ordinance adopted and approved pursuant to s. 87.30, Stats., or restrictive covenants, easements or other appropriate legal arrangements

between the owner of the dam and the owners of all property within the dam’s hydraulic shadow.

(12) “Large dam” means a dam that has either a structural height of more than 6 feet and a maximum storage capacity of more than 50 acre–feet or a structural height of 25 feet or more and a maximum storage capacity of more than 15 acre–feet.

(13) “Maximum headwater” means the maximum water surface elevation in an impoundment before overtopping would occur.

(14) “Maximum storage capacity” means the volume of water in acre–feet capable of being stored behind a dam at maximum headwater.

(15) “Modification” means any physical change to a dam, other than maintenance or repair of the existing components, that results in a change in the dam’s hydraulic capacity or structural stability.

(16) “Municipality” means any town, village, city or county in this state.

(17) “Order” means an enforcement order issued by the department under s. 31.19 (5), Stats., to an owner to repair or abandon a dam.

(18) “Overtopping” means the flow of water over parts of a dam which are not part of its spillway system.

(19) “Owner” means any municipality or lake district which has title to a dam or to the specific piece of land on which a dam is physically located.

(20) “Principal spillway” means the primary structure for the discharge of normal flow through a dam.

(21) “Regional flood” means a flood determined to be representative of large floods known to have occurred in Wisconsin and which may be expected to occur on a particular stream once in every 100 years.

Note: The regional flood is based upon a statistical analysis of stream flow records available for the watershed or an analysis of rainfall or runoff characteristics in the watershed or both. The flood frequency of the regional flood is once in every 100 years. In any given year, there is a 1% chance that the regional flood may occur or be exceeded.

(22) “Repair” means work performed on a dam, including maintenance, which is required to provide proper operation or continued structural integrity of the dam and does not change the dam’s hydraulic capacity.

(23) “Structural height” means the difference in elevation in feet between the point of lowest elevation of a dam before overtopping and the lowest elevation of the natural stream or lake bed at the downstream toe of the dam.

History: Cr. Register, April, 1991, No. 424, eff. 5–1–91.

NR 335.04 Eligibility for a state grant. (1) Any municipality or lake district that owns a dam in Wisconsin may apply for state aid for repair, modification or abandonment of the dam upon compliance with sub. (2).

(2) To be eligible to receive a grant under this chapter, the owner shall:

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(a) Request, in writing, financial assistance under this chapter within 6 months after receiving directives or an order for repair, modification or abandonment of the dam resulting from a department investigation or inspection of the dam, or have received a directive from the department or have been under order by the department to repair, modify or abandon the dam, on or before August 9, 1989; and

(b) Comply with all applicable requirements of this chapter.

History: Cr. Register, April, 1991, No. 424, eff. 5-1-91.

NR 335.05 State share. The state share may not exceed 50% of the total eligible project costs nor exceed \$200,000 for any one dam.

History: Cr. Register, April, 1991, No. 424, eff. 5-1-91.

NR 335.06 Application and award procedures. Aid available under this program shall be awarded to those projects with the highest points on a priority list, as determined by the criteria in s. NR 335.09, and in accordance with the procedures in this section. Projects on the priority list shall be funded within the limits of available funds. Applications with identical point totals shall be assigned priority based upon the date the complete application was received by the department with highest priority given to the earliest received complete application.

(1) All applications for a grant under this chapter shall be received by the department no later than April 1 of each year.

(2) The department shall establish a priority list by June 1 of each year which ranks all complete applications received by the April 1 deadline. Applicants shall be notified of their placement on the priority list and the probability of approval for funding. The ranking of applicants shall be made available upon written request.

(3) Applicants receiving a commitment for funding shall submit plans and specifications to the department, for approval, prior to October 1 of the same year the application is made.

(4) Applicants receiving a commitment for funding shall submit construction bids for the proposed work to the department within 60 days of department approval of plans and specifications. Following submission to the department, the owner may rebid the project without losing eligibility if the original bid is deemed too high or inappropriate. The applicant shall rebid the project within 60 days of receipt of the original bid. The department shall direct the owner to rebid the project if it deems the bid inappropriate. The applicant shall rebid the project within 60 days of receiving notification from the department that the department deems the bid inappropriate.

(5) The department shall issue, in writing, a notice of grant award within 30 days of receipt of an acceptable construction bid.

(6) All complete applications received after April 1 shall be considered for funding during the next year in which money becomes available. To be considered, any amendment to a late application shall be received by the department no later than the next April 1 application deadline.

(7) If there are insufficient funds to award aid to all eligible applicants on the priority list, the remaining projects shall be considered for funding during the next year in which money becomes available. To be considered, any amendments to unfunded applications shall be received by the department no later than the next April 1 application deadline.

History: Cr. Register, April, 1991, No. 424, eff. 5-1-91.

NR 335.07 Grant application. (1) PROCEDURE. (a) A separate grant application shall be submitted to the department for each individual dam for which financial assistance is requested under this chapter.

(b) The department shall review each application received for completeness and shall advise the applicant of any deficiencies, omissions or errors in the application in writing. Incomplete

applications may not be considered if all information is not received by the department by April 1.

(2) CONTENTS OF APPLICATION. An application for a grant under this chapter shall be made on forms furnished by the department. In addition to the application form, the application shall include the following:

(a) Certified copies of the following resolutions of the governing body of the municipality or lake district:

1. A resolution designating an authorized representative, and authorizing the representative to apply for a grant under s. 31.385, Stats., and this chapter, on behalf of the owner.

2. A resolution stating that the owner agrees to pay a share of the eligible costs which is equal to the total project cost minus the state share.

3. Proof of receipt of a letter sent by certified mail, from the owner to the municipality responsible for the implementation of land use controls, informing the municipality that a change in the land use controls may be necessary to secure the hazard rating for the dam.

(b) All data and calculations to show that dams to be repaired or modified will meet all requirements of ch. NR 333 where applicable. All owners shall provide the following with the application:

1. A dam failure analysis including maps suitable for the purpose of implementing land use controls below the dam.

2. A conceptual design and cost estimate for the construction phase of the project defining the eligible project costs.

3. A cost estimate for the engineering work required to complete the project, including preparation of all documents required under this chapter.

(c) All data and calculations to show that dams to be abandoned will meet the requirements of ch. 31, Stats. All owners shall provide the following with the application:

1. An application, under ch. 31, Stats., for a permit or approval to abandon the dam.

2. All information necessary for the municipality responsible for implementation of land use controls to implement controls in the area flooded during the regional flood without the dam in place.

3. A project description and cost estimate for the construction portion of the project defining eligible project costs.

4. A cost estimate for the engineering work required to complete the project, including preparation of all documents required under this chapter.

Note: Application forms are available from the department by writing to the Wisconsin Department of Natural Resources, Bureau of Water Regulation and Zoning, P.O. Box 7921, Madison, WI 53707.

History: Cr. Register, April, 1991, No. 424, eff. 5-1-91.

NR 335.08 Eligible and ineligible costs. (1) ELIGIBLE COSTS. The following project costs, whether incurred under contract or in the form of salaries and benefits, may be reimbursed under this chapter, if the grant is awarded:

(a) Actual and reasonable engineering costs incurred in preparing the studies and application form required under s. NR 335.07 (2) (b) and (c);

(b) Actual and reasonable engineering costs incurred in preparing plans and specifications as required in s. NR 335.06 (3), the operation, inspection and maintenance plan, and the emergency action plan;

(c) Actual and reasonable construction costs incurred in the repair, modification or abandonment of the dam, including labor and materials; and

(d) Actual and reasonable engineering costs involved in the on-site inspection of the repair, modification or abandonment of the dam. On-site inspection by an engineer registered in the state of Wisconsin is required during critical stages of construction.

(2) INELIGIBLE COSTS. Ineligible costs include:

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- (a) Costs incurred prior to August 9, 1989;
 - (b) The cost of materials and labor for installation or repair of items directly associated with hydroelectric power facilities at the dam;
 - (c) Costs incurred prior to the date of the state grant award except engineering costs as provided in sub. (1);
 - (d) Costs of routine maintenance including, but not limited to, mowing grass, painting signs and debris removal;
 - (e) Costs of equipment necessary for routine maintenance of the dam;
 - (f) Costs for which payment has been or will be received under another state or federal cost sharing or grant program or from another municipality or any other outside funding source; and
 - (g) Costs attributable to the correction of errors or deficiencies in construction funded under this chapter due to failure to comply with department approved construction plans and specifications.
- (3) ALLOCATION OF COSTS.** Total project costs may be allocated between eligible and ineligible costs using one of the following methods:

(a) *Unit cost method.* When the unit cost method is used, costs for individual work items shall be prorated between eligible and ineligible portions of the project based on an equal cost per unit.

(b) *Project cost method.* When the project cost method is used, eligible project costs shall be based on engineering costs plus the cost of construction reflected in the contractor's billings to the owner. Owners using this method shall submit the contractor's itemized billings showing the breakdown of eligible work items.

History: Cr. Register, April, 1991, No. 424, eff. 5-1-91.

NR 335.09 Criteria for priority ranking. The following criteria shall be used by the department to rank proposed projects for the purpose of determining funding priority:

(1) Dam hazard rating based on current development in the hydraulic shadow:

- (a) High hazard rating, 20 points;
- (b) Significant hazard rating, 10 points; or
- (c) Low hazard rating, 5 points.

(2) Adequate land use controls currently in effect or dam to be abandoned:

- (a) Adequate land use controls in the hydraulic shadow, 20 points;
- (b) Adequate land use controls in place within the 100 year floodplain, 10 points;
- (c) No land use controls or inadequate land use controls in place, 0 points; or
- (d) Dam to be abandoned, 20 points.

(3) Financial need (add the points for each column and divide by 2):

| Points Applicable to Each Column | *Per Capita Income, Per cent of State Average | *Local Share of Project Cost Plus Current Long Term Non School Indebtedness as a Percent of Statutory Limitation Based on Equalized Valuation |
|----------------------------------|---|---|
| 1 | 135 and over | Less than 10% |
| 2 | 100 to less than 135 | 10% to less than 20% |
| 3 | 89 to less than 100 | 20% to less than 30% |
| 4 | 80 to less than 89 | 30% to less than 40% |
| 5 | 72 to less than 80 | 40% to less than 50% |
| 6 | 65 to less than 72 | 50% to less than 60% |
| 7 | 59 to less than 65 | 60% to less than 70% |
| 8 | 54 to less than 59 | 70% to less than 80% |
| 9 | 50 to less than 54 | 80% to less than 90% |
| 10 | less than 50 | 90% to less than 100% |

* Based on the most recent department of revenue publication, Long Term Indebtedness of Wisconsin Political Subdivisions and Taxes, Aids and Shared Taxes and confirmation of its applicability by department investigation.

When determining financial need points for lake districts, the point totals are to equal the weighted average of the income and indebtedness figures for the individual municipalities making up the district, based on the percent of the district lying within each municipality.

(4) Total eligible project cost:

(a) Total estimated project cost greater than \$50,000, 10 points; or

(b) Total estimated project cost of \$50,000 or less, 0 points.

(5) Navigability:

(a) Dam on navigable stream, 10 points; or

(b) Dam on nonnavigable stream, 0 points.

(6) Large dam:

(a) Large dam, 10 points; or

(b) Small dam, 0 points.

History: Cr. Register, April, 1991, No. 424, eff. 5-1-91.

NR 335.10 Construction period. **(1)** All construction performed on an eligible project shall be completed in accordance with s. NR 335.12 within one year from the date of the grant award unless the department extends that period for good cause. If an extension is warranted by the circumstances and is requested in writing by the grantee before the end of the initial one-year construction period, the department may extend the construction period for up to 2 additional years.

(2) If the grantee fails to comply with sub. (1), the grantee may not receive any further state funds and shall reimburse the department for any state funds already received under this chapter. The uncompleted portion of the project shall be considered for funding in the next year in which money becomes available upon submission of a new application in compliance with this chapter.

History: Cr. Register, April, 1991, No. 424, eff. 5-1-91.

NR 335.11 Final project approval. After the project is complete and approved by the owner, the owner shall submit 3 copies of as-constructed plans and specifications, monthly inspection reports prepared by the inspecting engineer on the project, and written certification from the owner's engineer stating that the project was completed in compliance with s. 31.12 (4), Stats. The department shall conduct a final inspection of the project within 60 days after receiving the as-constructed plans and specifications, inspection reports, and certification. A project approval letter shall be sent to the owner within 30 days of final inspection by the department.

History: Cr. Register, April, 1991, No. 424, eff. 5-1-91.

NR 335.12 Grant payments. The grantee shall be paid the state share of those eligible project costs which have prior department approval in the following installments:

(1) If the dam is repaired or modified:

(a) 50% of the state share of total eligible costs, of the engineering contract and the construction bids, shall be paid to the grantee, following 50% completion of the project, within 90 days after the department has received a written request and supporting documentation by the owner's authorized representative. The department shall inspect the project, review the supporting documentation, and determine that the owner has expended at least 50% of the state share of total eligible costs and that the work meets the requirements of this chapter prior to making payment to the owner; and

(b) If the emergency action plan and inspection, operation and maintenance plan are approved by the department prior to the completion of the project, the state share of the remaining eligible costs, based on the final audited project cost, shall be paid to the grantee within 90 days after the department has conducted a final audit and has determined the final audited eligible costs. A final

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audit shall be conducted within 90 days after the project has been completed and approved by the owner and the department pursuant to s. NR 335.11; or

(c) If the emergency action plan and inspection, operation and maintenance plan are not approved by the department prior to the completion of the project, the state share of the remaining eligible costs less 10%, based on the final audited project cost, shall be paid to the grantee within 90 days after the department has conducted a final audit and has determined the final audited eligible costs. A final audit shall be conducted within 90 days after the project has been completed and approved by the owner and the department pursuant to s. NR 335.11. The remaining state share of eligible costs shall be paid to the grantee within 60 days after the grantee has received approval, by the department, of an emergency action plan and an inspection, operation and maintenance plan.

(2) If the dam is abandoned:

(a) 50% of the state share of total eligible costs, based on the engineering contract and the construction bids, shall be paid to the grantee, following 50% completion of the project, within 90 days after the department has received a written request and supporting documentation by the owner's authorized representative. The department shall inspect the project, review the supporting documentation, and determine that the owner has expended at least 50% of the state share of total eligible costs and that the work meets the requirements of this chapter prior to making payment to the owner; and

(b) The state share of the remaining eligible costs, based on the final audited project cost, shall be paid to the grantee within 90 days after the department has conducted a final audit and has determined the final audited eligible costs. A final audit shall be conducted within 90 days after the project has been completed and approved by the owner and the department pursuant to s. NR 335.11.

History: Cr. Register, April, 1991, No. 424, eff. 5-1-91.

NR 335.13 Adoption of land use controls in the hydraulic shadow. If the grantee or the municipality responsible for the implementation of land use controls in the hydraulic shadow, or both, fail to adopt the land use controls necessary to secure the dam hazard rating in accordance with ch. NR 333, the grantee may not receive any further state funds under this chapter and shall reimburse the department for any state funds already received under this chapter. The necessary land use controls shall be adopted within one year after the department has approved the dam failure analysis submitted with the application. If adequate

justification is received and approved by the department an extension of the one year deadline may be given.

History: Cr. Register, April, 1991, No. 424, eff. 5-1-91.

NR 335.14 Grantee accountability. (1) RECORDS MANAGEMENT. Each grantee shall maintain an accounting system that accurately reflects all fiscal transactions, incorporates appropriate controls and safeguards, and provides good audit trails, particularly to source or original documents.

(a) *Accounting procedures.* Financial schedules and statements filed with grant applications and payment requests shall be based on records maintained under generally accepted accounting principles which meet the following minimum requirements:

1. Accounts shall separate grant receipts and eligible project costs from those allocable to other programs and activities.

2. Payments received under another state or federal cost sharing or grant program or from another municipality or any other outside funding source and expenditures shall be listed in sufficient detail to provide a basis for accurate and complete reporting.

3. Supporting records for all expenditures shall be itemized in sufficient detail to reflect the nature and propriety of each. Proof of payment, such as cancelled checks or receipts from vendors, shall be maintained.

4. If the owner uses its own labor force, payroll records shall be maintained that reflect actual program hours worked by each employee as well as allocable gross wages and fringe benefits paid. Time and attendance records describing the work performed, specifying project hours worked by day, and both signed by the employee and bearing evidence of management approval, shall be maintained, along with computations showing hourly pay rates and allocation of fringe benefits.

(b) *Fiscal controls.* 1. Any consultant, construction or service contract totalling \$10,000.00 or more annually shall be covered by a formal contract or agreement specifying financial terms, contract duration, and services to be rendered.

2. Allowable rates for use of an owner's own equipment shall be limited to the county-wide rates established annually by the department of transportation (DOT). Eligibility of the use of specialized equipment for which DOT rates are not available shall be based on the allocable portion of depreciation plus normal and reasonable operation expenses attributable to project activities.

(2) RECORDS RETENTION AND AUDITING. The grantee's records, and the records of contractors and engineers which are pertinent to a specific state grant award, shall be subject at all reasonable times to inspection, copying and audit by the department for a period of 7 years from the date of final payment.

History: Cr. Register, April, 1991, No. 424, eff. 5-1-91.